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REF: 2008 STATE 128559

¶1. Following is Embassy Yerevan's submission per reftel request for the 2009 Investment Climate Statement for Armenia.

BEGIN TEXT

- t 12. While Armenia's government officially welcomes foreign investment and the country has received respectable rankings on some global indices as a place to do business, the country's investment climate poses several significant challenges: A population of just three million; relative geographic isolation due to closed borders with Turkey and Azerbaijan; per capita GDP of under USD 3,000; and high levels of corruption in both official and commercial spheres. Foreign businesses must frequently contend with tax and customs processes that lack transparency and add to costs; the court system lacks independence, making it an unreliable forum for resolution of disputes; and the GOAM has yet to resolve a backlog of several years of Value-Added Tax (VAT) refunds, with some companies owed several million dollars.
- 13. Major sectors of Armenia's economy are controlled by well-connected businessmen--some of them members of Parliament or with other government positions -- who enjoy government - protected monopolies. This raises barriers to new entrants, limits consumer choice, and discourages investments by multinational firms that insist on partnering with politically-independent businesses. GOAM also continues on occasion to deploy government agencies, including the tax and customs services, against political opponents.
- 14. According to the National Statistical Service (NSS), foreign investment in Armenia has increased steadily from USD 70 million in 2001 to USD 805 million as of September 2008. From January to September 2008, Foreign Direct Investment (FDI) in Armenia totaled USD 595 million, a 91 percent increase over the same period in 2008. Major foreign investments were from Russia, Argentina and Germany. After six years of annual double-digit increases, Armenia's GDP grew just 6.8 percent in 2008, after taking account of a sharp decline in the last quarter of 2008. Due to the global financial crisis that took hold in late 2008, the IMF now projects GDP growth of three percent for 2009 for Armenia.
- acquired interests in the telecommunications, mining, energy, air transportation and financial sectors. The privatization of Yerevan's largest hotels, two historic brandy factories, the Zvartnots International (Yerevan) and Shirak (Gyumri) Airports, the telecommunications network, several mining assets and much of the energy generation and distribution system accounts for the bulk of the foreign commercial presence in Armenia.
- ¶6. According to the NSS, FDI inflows were up by 64.8 percent

year-on-year in the first half of 2008. Russia was the leading investor in this period, accounting for more than two-thirds of the total, attributable to the acquisition by Russian owners of several major businesses, including both of Armenia's mobile phone networks, K-Telecom (dba Vivacell-MTS) and Armentel (dba Beeline), several mining companies and the national railroad network.

- 17. The energy sector was the largest recipient of FDI in January-September 2008, attracting almost 37 percent of the total. The ground transportation sector attracted 22 percent of total FDI, due to restoration of rail tracks and refurbishment of carriages and rail cars. Communications was the third-largest are of foreign investment, with nine percent of the total. Greenfield investments consist primarily of small and medium-sized enterprises (SMEs). There are currently 36 U.S. information technology (IT) firms operating in Armenia.
- 18. In 2008, the Armenian dram (AMD), which had increased approximately 40 percent over the USD over the previous four years, remained relatively steady against the U.S. dollar, at approximately AMD 300 per USD. Although the GOAM officially maintains a "managed float," the Central Bank of Armenia (CBA) spent much of 2008 maintaining the AMD at this level. For much of the year the CBA intervened to prevent further Dram appreciation, but in the last quarter of 2008 the CBA spent approximately USD 225 million (about 15 percent of its foreign reserves) to prevent its decline. By maintaining the Dram, the CBA hopes to forestall a large-scale movement out of Dram-denominated assets and dollarization that could lead to a collapse of the currency. However, many experts believe that the CBA's strategy is not sustainable, and that the AMD is due for a significant adjustment. Dram depreciation would benefit exporters and help reduce Armenia's current account deficit, which

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for January-October 2008 reached USD 2.6 billion, a 33 percent increase compared to the same period of 2007. Year-on-year inflation amounted to 9.3 percent as of November 2008.

OPENNESS TO FOREIGN INVESTMENT

- ¶9. Armenia's investment and trade policy is relatively open, and the GOAM consistently asserts its interest in obtaining foreign investment. Significant obstacles remain, however, particularly with respect to corruption. Armenia ranked 44th out of 178 economies in the World Bank's Doing Business 2009 report. However, this included rankings of 61st for enforcement of contracts, 66th for ease of starting a business, 88th for protecting investors, and 150th for paying taxes (amounts and administrative burden). Foreign companies are entitled by law to the same treatment as Armenian companies (national treatment), and in some cases they may benefit from temporary preferential tax treatment including a two-year profit tax exemption. This exemption, however, phased out at the end of 2007. Under the Armenian Law on Profit Tax, taxpayers engaged in agricultural production are exempt from tax on that income. However, due to WTO requirements, this is set to expire in 2010.
- 110. Basic provisions regulating American investments are set by the Bilateral Investment Treaty (BIT), signed by the United States and Armenia in 1992, and by the 1994 Law on Foreign Investment. In addition to providing for national treatment and most-favored nation treatment, the BIT sets out guidelines for the settlement of disputes involving the governments of either party.
- 111. Armenia's 1997 Law on Privatization (amended in 1999) states that foreign companies have the same rights to participate in the privatization processes as Armenian firms. Nevertheless, the majority of important privatizations of Armenia's large assets have not been competitive or transparent, and political considerations have in some instances trumped Armenia's international obligations to hold fair tender processes.
- 112. Under the Constitution, foreign individuals are prohibited from owning land in Armenia, but this prohibition does not apply to foreign businesses. Armenia does not issue foreign tax credits and

has no double taxation treaty with the United States. To date, no cases have been identified in which U.S. entities were disadvantaged for lack of a double taxation treaty. The Armenian government has expressed interest in negotiating a double taxation treaty with the United States. The State Department and U.S. Embassy Yerevan would welcome information from American firms or individuals that would substantiate whether such a treaty would facilitate U.S. business interests in Armenia.

- 113. Armenia is a member of the following major international organizations: IMF, World Bank/IDA, IFC, WTO, OSCE, Council of Europe, UN/UNCTAD/UNESCO, MIGA, ILO, WHO, WIPO, INTERPOL, European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), IAEA, World Tourism Organization, World Customs Organization, International Telecommunications Union and the Organization of the Black Sea Economic Cooperation (BSEC). Armenia became the 145th member of the WTO in February 2003.
- 114. The seemingly open legislative framework and the government's visible effort to attract more foreign investment are overshadowed by instances of unfair tender processes and preferential treatment. A few recent cases of de facto takeovers by certain investors, facilitated by senior government officials, as well as the state's failure to ensure a fair investigation and judicial review, has undermined the government's assurances of equal treatment and transparency.

CURRENCY CONVERSION AND TRANSFER POLICIES

115. There are no limitations on the conversion and transfer of money or the repatriation of capital and earnings, including branch profits, dividends, interest, royalties, or management or technical service fees. Most banks can transfer funds internationally within 2-4 days. The Government maintains the Armenian Dram (AMD) as a freely convertible currency under a managed float, although during the latter part of 2008 intervened regularly in the foreign exchange markets to sustain its value. According to the 2005 law on "Currency Regulation and Currency Control," prices for all goods and services, property and wages must be set in Armenian Drams. There are exceptions in the law, however, for transactions between resident and non-resident businesses and for certain transactions involving goods traded at world market prices. The new law requires that interest on foreign currency accounts be calculated in that

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currency, but be paid in Armenian Drams.

EXPROPRIATION AND COMPENSATION

116. Under Armenian law, foreign investments cannot be nationalized. They also cannot be confiscated or expropriated except in extreme cases of natural or state emergency, upon a decision by the courts and with compensation paid to the owner. While the U.S. government is not aware of any confirmed cases of expropriation, a local subsidiary of a U.S.-based mining company was engaged for several years in a dispute with the GOAM over mining rights, and accused the GOAM of attempting to expropriate company assets. The parties reached a settlement in 2008 after lengthy negotiations at various levels.

DISPUTE SETTLEMENT

117. According to the 1994 Foreign Investment Law, all disputes that arise between a foreign investor and the Republic of Armenia must be settled in Armenian courts. In late January 2007, however, President Kocharian signed a new law on Commercial Arbitration, which provides investors with a wider range of options for resolving their commercial disputes. The Bilateral Investment Treaty (BIT), signed by the U.S. and Armenia, provides that in case a dispute arises between an American investor and the Republic of Armenia, the

investor may choose to submit the dispute for settlement by binding international arbitration. As an international treaty, the BIT supersedes Armenian law, a point which Armenia's constitution acknowledges and that exists in actual practice.

- 118. Many Armenian courts suffer from low levels of efficiency, independence and professionalism, and there is a need to strengthen the Armenian judiciary. While there have been a few investment disputes involving U.S. and other foreign investors, there is no evidence of a pattern of discrimination against foreign investors in these cases. In general, the government honors judgments from both arbitration and Armenian national courts.
- 119. Disputes to which the GOAM is not a party may be brought before an Armenian or any other competent court, as provided by law or by agreement of the parties. Following the court reform in January 2008, commercial disputes are tried in courts of general jurisdiction. The verdict can be appealed to the Court of Appeal and Court of Cassation, the highest judicial authority in Armenia. The Law on Arbitration Courts and Arbitration Procedures provides rules governing the settlement of disputes by arbitration. According to Constitutional amendments of 2005, the courts of first instance have undergone a major restructuring; as a result, in January 2008, the GOAM abolished the Economic Court and launched a new specialized administrative court and courts of general jurisdiction to hear civil and criminal cases, in the hope of streamlining these proceedings. Armenia is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington Convention) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

PERFORMANCE REQUIREMENTS AND INCENTIVES

- 120. Armenia currently has incentives for exporters (no export duty, VAT refund on goods and services exported) and foreign investors (income tax holidays, and the ability to carry forward losses indefinitely). The government amended the VAT law in November 2005 to allow companies to delay VAT payments for 1-2 years on certain imported goods used in production and manufacturing. Also, in accordance with the Law on Foreign Investment, several ad hoc incentives may be negotiated on a case-by-case basis for investments targeted at certain sectors of the economy and/or of strategic importance to the economy.
- 121. The Government of Armenia has imposed performance requirements for investors as part of privatization agreements, especially for the privatization of large state assets like mines or the telecommunications network. There are no performance requirements for de novo investment.
- 122. The GOAM takes considerable interest in economic activities in the disputed region of Nagorno-Karabakh. In August 2008, the Central Bank of Armenia (CBA) terminated operations of Western Union's money transfer services in Armenia, following the company's decision to close its operations in Nagorno-Karabakh under pressure

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from the National Bank of Azerbaijan. As the CBA's mandate does not officially include Nagorno-Karabakh, the decision by the CBA is viewed as politically motivated.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

123. The Armenian Constitution protects all forms of property and the right of citizens to own and use property. Foreign individuals who do not hold special residence permits cannot own land, but may lease it; companies registered by foreigners in Armenia as Armenian businesses have the right to buy and own land. There are no restrictions on the rights of foreign nationals to acquire, establish or dispose of business interests in Armenia.

PROTECTION OF PROPERTY RIGHTS

- 124. Armenian law protects secured interests in property, both moveable and real. Armenian legislation provides a basic framework for secured lending, collateral and pledges, and provides a mechanism to support modern lending practices and title registration.
- 125. Domestic legislation, including the 2006 Law on Copyright and Related Rights, provides for the protection of intellectual property rights on literary, scientific and artistic works (including computer programs and databases), patents and other rights of inventions, industrial design, know-how, trade secrets, trademarks and service marks. Armenia's legislation is in compliance with the Trade Related Aspects of Intellectual Properties (TRIPS) Agreement. In January 2005, the government created an IPR Enforcement Unit in the Organized Crime Department of the Armenian Police. The onus for IPR complaints remains with the offended party; the Government of Armenia has yet to prosecute one case of IPR violations successfully. There is also an Intellectual Property Agency in the Armenian Ministry of Trade and Economic Development responsible for granting patents and for overseeing other IPR related matters. While Armenia has made some progress on IPR issues, strengthening enforcement mechanisms remains a priority.

TRANSPARENCY OF THE REGULATORY SYSTEM

- 126. The Armenian regulatory system pertaining to business activities still lacks transparency in implementation. A small group of businesses dominates several sectors and suppresses full competition. The inconsistent application of tax, customs (especially with respect to valuation) and regulatory rules, especially in the area of trade, undermines fair competition and adds uncertainty for small- and medium-sized businesses and new market entrants. Banking supervision is relatively well developed and largely consistent with the Basel Core Principles. In early 2006, the Central Bank of Armenia (CBA) became the primary regulator for all segments of the financial sector, including banking, securities, insurance and pensions.
- 127. Safety and health requirements, most of them holdovers from the Soviet period, generally do not impede investment activities. Bureaucratic procedures can nevertheless be burdensome and discretionary decisions by individual officials still provide opportunities for petty corruption. Despite persistent problems with corrupt officials, both local and foreign businesses assert that a sound knowledge of tax and customs law and regulations enables business owners to deflect a majority of unlawful bribe requests.

CAPITAL MARKETS AND PORTFOLIO INVESTMENTS

128. Armenia's financial sector is not highly developed. As of September 2008, total bank assets were USD 3 billion (36 percent of GDP), up 43.7 percent from September 2007. The insurance market is very small, with total annual premiums amounting to approximately USD 10 million. IMF estimates suggest that banking sector assets account for 95 percent of total financial sector assets. Financial intermediation is poor: commercial lending rates in AMD range from 16 percent to 24 percent. Nearly all banks require collateral located in Armenia, and large collateral requirements often prevent potential borrowers from entering the market. Fourth quarter 2008 statistics will likely reflect an increase in commercial lending and mortgage rates by 1.5-2 percentage points on average. The climb is attributed to a shortage of liquidity in local banks related to the

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global financial crisis that has led to reduced commercial activity.

- 129. Although there is a system and legal framework in place, Armenia's securities market is not well developed, with minimal trading activity. On November 21, 2007, OMX, a leading expert in the equities exchange industry, and the Government of Armenia signed a Share Purchase Agreement regarding the acquisition of the Armenian Stock Exchange and the Central Depository of Armenia. According to the agreement, OMX became the sole shareholder of the Armenian Stock Exchange (Armex) and the Central Depository of Armenia (CDA). In addition to the Share Purchase Agreement, OMX and the Government of Armenia have also signed a Cooperation Agreement outlining joint efforts to support the long-term development of capital markets in Armenia.
- ¶30. Remittances constitute approximately 15 percent of Armenia's total GDP. According to the latest data released by the Central Bank, the volume of private (non-commercial) remittances for January-October 2008 increased by almost 30.6 percent compared to the same period in 2007, reaching last year's Central Bank forecast of USD 1.366 billion, from which net inflow amounts to around 85 percent, or USD 1,168 billion. The Central Bank's 2006 survey states that 37 percent of Armenian households regularly receive remittances. The most recent Central Bank data indicate that 89 percent of remittances originate in Russia and the remainder comes primarily from the US, Europe and other CIS countries. The World Bank estimates that remittances could decline by USD 250 million in ¶2009.

POLITICAL VIOLENCE

- 131. Armenia experienced ten days of peaceful political demonstrations following a disputed President election in February 12008. This was followed by a government crackdown on March 1-2 that resulted in ten deaths and the imposition of a 20-day State of Emergency that included limits on press reporting and restrictions on public gatherings. Since then, the GOAM has denied dozens of applications by opposition groups to hold political rallies. Many have proceeded without permission, and without incident. The GOAM also detained hundreds of opposition supporters in the wake of the March 1 events, with well over a hundred being charged and held for a significant period of time. Most have been convicted through trials of questionable fairness. Approximately two dozen have been pardoned by the President, but only after admitting to the crimes with which they were charged.
- 132. The GOAM has also appeared to use its agencies to retaliate against businesspersons who support the political opposition. Since the 2008 Presidential election, the GOAM has conducted tax audits of businesses owned by opposition supporters. Recently, one of the leading bottled-water factories, owned by an ardent supporter of the opposition Presidential candidate, was seized and put up for auction. Another of his companies was forced out of business when the Customs Service, for apparent political reasons, refused to release its imported goods. The owner, also a member of the National Assembly, was stripped of his parliamentary immunity and left the country before he could be arrested. He continues to top the police "Most Wanted" list. In 2008 the GOAM also initiated tax inspections of several independent and opposition newspapers, though none led to any legal action.
- 133. Armenia's ceasefire with Azerbaijan over the disputed region of Nagorno-Karabakh has held for more than 13 years; there have been no threats to commercial enterprises from skirmishes in the border areas. It is unlikely that civil disturbances, should they occur, would be directed against U.S. businesses or the U.S. community.

CORRUPTION

134. Corruption remains a significant obstacle to U.S. investment in Armenia. The Armenian Government introduced a number of reforms during the last four years, including the simplification of licensing procedures, civil service reform, a new criminal code, privatization in the energy sector, anti-corruption laws and regulations, and in 2004, establishment of an Anti-Corruption Council tasked with coordinating the government's anti-corruption

activities and improving policies aimed at the prevention of corruption. Nevertheless, corruption remains a problem in critical areas such as the judiciary, tax and customs operations, health, education and law enforcement. Petty corruption is widespread throughout society.

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- ¶35. In November 2003, the GOAM adopted a National Anti-Corruption Strategy paper which contained an action plan aimed at introduction of tax and customs reforms, harmonization of legislation and improvement of public access to information. The plan, completed in 2007, was widely criticized by local and international observers for failing to yield any result. The Armenian Government initiated discussion of a new anti-corruption strategy paper in the beginning of 2008 which is still underway.
- 136. According to the Transparency International (TI) 2008 Corruption Perception Index (CPI) report, Armenia ranked 109th among 180 countries, with a score of 2.9 (on a "10-0" scale, where "10" is the cleanest country and "0" the most corrupt), which signifies corruption as rampant in Armenia. No progress has been made during the last three years, with the Armenia's CPI equal to 2.9, 3.0 and 2.9 in 2006, 2007 and 2008.
- ¶37. Relationships between high-ranking government officials and the emerging private business sector encourage influence peddling between officials and the private firms from which they benefit. Powerful officials at the federal, district or local levels acquire direct, partial or indirect control over emerging private firms. Such control is exercised through a hidden partner or through majority ownership of a prosperous private company. This involvement can also be indirect, e.g., through close relatives and friends. These practices promote protectionism, encourage the creation of monopolies or oligopolies, hinder competition and undermine the image of the government as a facilitator of private sector growth.
- 138. The Law on Civil Service, in force since January 1, 2002, restricts participation by civil servants in commercial activities. The new Law on the Disclosure of Property and Income for heads of state authorities has increased transparency in government officials' decision-making and influence. Corrupt practices exist widely within private companies as well, mostly in the form of tax fraud and unregistered business activities.
- 139. In a move to increase transparency and introduce a degree of "naming and shaming" of major tax-dodgers, the GOAM since 2006 the GOAM has published quarterly lists of the country's largest business taxpayers. It is not clear if this has had the intended effect, as companies of some major businesspersons feature prominently on the list, while others remain conspicuous by their absence.

BILATERAL INVESTMENT AGREEMENTS

- ¶40. Armenia has bilateral investment treaties (BITs) in force with 21 countries: the U.S., Argentina, Austria, Belarus, Bulgaria, Canada, China, Cyprus, France, Germany, Greece, Georgia, Iran, Italy, Kyrgyzstan, Lebanon, Romania, Switzerland, Ukraine, the United Kingdom and Vietnam. According to the U.N. Conference on Trade and Development, Armenia has also signed BIT agreements with Belgium, Egypt, Finland, India, Israel, Russia, Tajikistan and Turkmenistan, but these agreements have not yet entered into force. Armenia is a signatory of the CIS Multilateral Convention on the Protection of Investor Rights.
- ¶41. The Treaty between the Republic of Armenia and the United States of America Concerning the Reciprocal Encouragement and Protection of Investment (the Bi-lateral Investment Treaty or BIT) was ratified in September 1995. The BIT sets forth investment conditions for investors of each party to be no less favorable than for national investors (national treatment) or for investors from any third state (a Most-Favored-Nation clause). It protects investment regulates dispute settlements between foreign companies and the governments of

OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

142. The "Investment Incentive Agreement between the Government of the Republic of Armenia and the Government of the United States of America," signed in 1992, provides a legal framework for OPIC's operations in Armenia. OPIC offers political violence insurance in Armenia and insures against expropriation. OPIC insures against currency inconvertibility only on a case-by-case basis. Armenia is also a member of the Multilateral Investment Guarantee Agency (MIGA).

LABOR

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- 143. Armenia's human capital is one of its strongest resources. The labor force is generally well educated, particularly in the sciences. Almost one hundred percent of Armenia's population is literate. Enrollment in secondary school is 92.8 percent, and enrollment in senior school (essentially equivalent to American high school) is 85.6 percent. According to a survey by the U.N. Development Program, approximately 20 percent of Armenians have completed some sort of higher education program.
- 144. Much of the new foreign investment in Armenia has occurred in the high-tech sector. High-tech companies have established branches or subsidiaries in Armenia to take advantage of the country's pool of qualified specialists in electrical and computer engineering, optical engineering and software design. Pilot training programs have increased the supply of qualified software programmers, and Armenia's IT sector is growing based on its qualified pool of inexpensive labor. However, a number of IT firms are currently facing the risk of a significant phase-out and/or shutdown due to the latest global economic developments. Two large software companies, German and U.S., have recently announced closures scheduled for early 2009 that will result in about 300 qualified technical staff losing their jobs.
- 145. The amended Labor Code came into force in June 2005, and is considered to be largely consistent with international best practices and the international conventions to which Armenia is a party. The law sets a standard 40-hour work week, with minimum paid leave of 28 calendar days annually. The draft 2008 budget, which has been approved by the National Assembly, increases the legal minimum wage to AMD 30,000 (about USD 100) per month. Most companies also pay a non-official extra-month bonus for the New Year's holiday. Entry-level skilled professionals (such as software engineers) command wages of about USD 500 per month. Wages in the public sector are often significantly lower than those in the private sector and, while all wages must be paid in AMD, many private sector companies continue to use a fixed exchange rate to denominate employee salaries.

FOREIGN TRADE ZONES/FREE PORTS

146. Armenia has no foreign trade zones or free ports at present. However, the Armenian Government has approved a concept to create a free trade zone in the area of Zvartnots International Airport. Another free trade zone is proposed to cover the Gyumri area as part of the Gyumri Techno-city concept paper unveiled by the Minister of Economy.

FOREIGN DIRECT INVESTMENT STATISTICS

 $\P47$. The following is volume of FDI based on data by the Armenian National Statistical Service:

Net FDI (According to IMF data)
Years 2001 2002 2003 2004 2005 2006 2007
Vol(USD m) 70 111 121 217 287 305 467

- 148. In 2008, the most significant foreign investments in Armenia came from Russia, Lebanon and Argentina. The Russian-Norwegian Mobile Telephone Operator Vimpelcom (operating under the Beeline brand), which purchased 100 percent of the Armenian National Telephone operator Armentel (which itself had been acquired by the Greek OTE company in 2006), has made significant investments to upgrade its network. (NOTE: It had previously announced plans to invest around USD 100 million in 2007, and has relinquished its monopoly over international calling and access to the internet. End Note] Argentinian-owned Armenian International Airports Company has made considerable investments as it continues to upgrade Zvartnots International Airport. Its investment has increased through its development of an airport near the city of Gyumri, in the northern part of the country.
- 149. In September 2007, another Russian telecom company, MTS, acquired 80 percent ownership of Vivacell, the second mobile operator in Armenia, with the remaining 20 percent remaining under the ownership of the Lebanese K-Telecom Company. Prior to the sale of the controlling stake to MTS, the Lebanese company had made a significant investment to expand the network further. A French firm, Orange, has been awarded a tender to operate a third mobile telephone service in Armenia, and is expected to launch business operations in Fall 2009.
- $\P50.$ Dutch Haypost Trust Management, which entered into a concessionary management agreement of the Armenian postal service in

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- 2006, has invested about USD two million out of a projected USD 10 million in upgrading the postal system and establishing local postal bank branches all over the country. The company has since been acquired by the same Argentinian company that owns Armenian International Airports.
- 151. The Armenian National Statistical Service reported that total foreign investment for the first nine months of 2008 was USD 805 million, up 71.4 percent from the same period in 2007. Of that foreign investment, USD 595 million was foreign direct investment (FDI), up 91 percent compared with the previous year.

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